IN THE

Supreme Court of the United States

October Term, 1959

No. 456

HORACE CHANDLER DAVIS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY TO GOVERNMENT'S BRIEF IN OPPOSITION

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In contrast to the *Barenblatt* case which serves as the exclusive reliance of the Government, the dominant, if not the sole "probable cause" for the Committee's having called petitioner, is the allegation that he wrote and distributed a pamphlet, "Operation Mind", attacking the Committee. This case thus presents a dramatic illustration of the way in which the political process, which the First Amendment was designed to safeguard, has been undermined by the Committee under the claim of investigating for a legislative purpose. One is not required to depart from the standards of deference owed by the courts to the Congress to discern here the Committee's use of its powers for improper purposes.

The Government points to the fact that a year before petitioner was called, the Committee had heard testimony from one Robert Gorham Davis that he had been a Communist at Harvard from 1937 to 1939 (Opp.4-5). But

neither in the hearing nor at the trial did the Committee claim that Robert Gorham Davis' testimony referred in any respect to petitioner (who turned thirteen in 1939).

The Government points to the mention at the hearing of unspecified "legislative proposals" (G. Ex. 8, p. 5355). These turned out at the trial to number two. One was a bill denying the use of second class mailing privileges to the Communist Party or to Communist fronts (R.41). According to Congressman Clardy, "That tied in with 'Operation Mind' " (R.41), although there was no suggestion that "Operation Mind" had been mailed, second class or otherwise. The other was a bill to tighten limitations on use of United States passports (R.36-37). But what did the Committee's "inquiry into Communism in education", including the testimony of Robert Gorham Davis (Opp.4), have to do with second class mailing privileges or passports?

The Committee's activities would be unconstitutional even if cloaked by a plausible pretense of collecting information for legislative purposes. The pretense in this case is so far-fetched as to be altogether transparent, and the hearings can only be dealt with in terms of their true nature.

The Government misrepresents the argument of the petition (Opp.8). Petitioner's constitutional objections to the Committee's hearings (Pet.6-12) were not based on injury to himself; did not appeal only to the First Amendment, but also to the prohibition against Bills of Attainder; and did not rely on the special status of the field of education.

What is involved in this case, and in the some thirty cases now pending which share its issues, is no small matter. The hard fact is that the House Committee is seeking to transform the constitutional relationship of our government to the political process in ways that are both fundamental

and sinister. The Committee usurps executive and judicial powers in furtherance of its systematic attack on the prerogative of the people to decide freely matters of basic public policy. To hasten its transformation of our tripartite, democratic system into a bureaucratic apparatus for enforcing political conformity, the Committee needs to achieve autonomy. It is of the gravest importance that the Court refuse to yield its responsibility for the protection of constitutional liberty to the Committee's fraudulent rationale.

Respectfully submitted,

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